

Section 5: State and Tribal Partnerships

The Partnership Concept

Successful partnerships with our states and tribes are essential to the Region's efforts in protecting human health and safeguarding the natural environment. EPA Region 8 and our states and tribes continue to refine joint roles and responsibilities for delivering environmental services. Issues surrounding accountability of one level of government to another have been the focus of many discussions. Multi-level partnerships also exist with other federal agencies, local governments, non-governmental organizations, industry groups and many others.

The partnership concept recognizes that each partner brings unique experience, capabilities, knowledge and resources to the table and that environmental issues can be effectively addressed by maximizing these assets. The partners recognize the unparalleled opportunity for various levels of government to address common goals with a common vision with each level of government being accountable to the others. Each partner being responsible and accountable to the others entails a new way of thinking and a commitment to mutual success. Generally speaking, the partnership representatives jointly develop guidelines, vision statements, values and operating principles, which guide business operations when applying the partnership concept.

Partnership Development: Joint Goals and Priorities

As noted in Section 1, the Region has identified five priorities for FY04: energy, agriculture, direct implementation, revitalization and homeland security. Each state and tribe has identified its priorities as well which may include some of the same ones as the Region.

Region 8 priorities are the result of consultation with our state and tribal partners. The current list of priorities has evolved since their introduction as a draft in the spring of 2003. They were discussed in joint meetings with environmental and agriculture commissioners, and in planning meetings in each state. Each state and tribe agreed to work with the Region (as appropriate) to address specific concerns and achieve priority objectives. With input from our partners, the Region has also been developing priority-specific strategies as a way to make environmental progress.

The Region has both Performance Partnership Agreements (PPAs) and Performance Partnership Grants (PPGs) with every state in Region 8 except for Wyoming, which operates with the State EPA Agreement (SEA). In all the Region 8 states, the Agreement serves as the work plan for the PPG. Consequently, the Regional Strategic Plan is linked to PPA/G planning, negotiation and evaluation cycles.

The Region 8 states and EPA have entered into the National Environmental Performance Partnership System (NEPPS) with the primary goal of delivering environmental services efficiently and effectively at the right level of government. Partnerships are one avenue undertaken to reach this goal. The Region 8 states and EPA have committed to reinforce the NEPPS through joint

strategic planning, fortifying existing partnerships, identifying new partnership opportunities and applying revisions to state/EPA planning processes with the intent of enhancing state participation.

Consequently, the Region 8 states and EPA have evolved the annual planning meeting from a meeting on program evaluation to a discussion of joint strategic goals which helps determine joint priorities. This approach enables both agencies to develop a better understanding of the other's unique needs and to focus jointly on cross-cutting environmental priorities to protect and improve the air, land and water resources in the Region 8 states. The meetings provide an opportunity for states to customize the priority list noted above by adding priorities of special interest – such as drought. Region 8's pending order on oversight will put additional emphasis on integrating program evaluation into the planning process with states.

State Discussion

The partnership between EPA Region 8 and states to provide environmental regulation and protection has, in general, matured and improved over the last decade. Techniques to achieve results, measure performance and improve efficiency are continually being tested and implemented. The characteristics of the EPA-state relationship and the business practices between EPA and states have steadily evolved since states began accepting primacy for laws and programs in the 1970s. Operationally, states conduct most of the work of the federally authorized programs while EPA oversees the work by the states and implements the non-authorized programs. However, oversight still occurs through both real-time review concurrent with state work and after-the-fact review of state actions.

It has been difficult to fully transition to long-term planning, results-based performance measurement, and promote flexibility and innovation without a fundamental change in the business operations vital to the EPA-state relationship. More importantly, it continues to be challenging for the states and EPA to address persistent budget shortfalls without substantial changes in business practices. Nevertheless, Region 8 works closely with state partners on the joint mission of protecting and improving environmental quality. The Region strives to maintain close working relationships with each of the states at all levels of the organization.

Using the single definitive agreement model being promoted by EPA and the Environmental Council of the States (ECOS), Region 8 is collaborating with states to advance a business relationship that reflects the natural progression in the EPA-state partnership. This approach builds on the elements of the ECOS/EPA model, and presents a simple idea that recognizes state primacy, state capacity and commitment to do good work, while also recognizing EPA's responsibility to provide effective oversight and directly carry out its environmental protection work for non-delegated programs.

In the coming year, we intend to emphasize environmental results and revitalize the Differential Oversight component of the *May 17, 1995 Joint Commitment to Reform Oversight and Create a National Environmental Performance System* by developing an accreditation system for state environmental programs demonstrating satisfactory performance. This system will be developed in

cooperation with the states, and will be piloted with selected programs in Utah and Colorado.

One very ambitious partnership project will be highlighted during 2004. The Utah DEQ, with the assistance of an ECOS grant, is leading a work group aimed at a closer alignment of State, Regional and EPA planning. The major programs in Region 8 are participating with the environmental departments of all six states on this project. There are two principal goals for the project. The first is to develop a model for proactive state engagement in the Regional Plan that aligns with the existing regional PPA/PPG process and overall EPA goals. Expected products under this goal include:

- An assessment of how and when states currently convey their annual strategic priorities and establish joint strategic priorities with EPA Region 8 as part of the PPA/PPG process.
- An analysis of whether the existing PPA/PPG process aligns with EPA's timeline for the Regional Plan, NPM Guidance and the EPA Annual Plan and Budget and whether the existing strategic priority "sharing" process between the region and states is sufficient to provide states an opportunity for strategic input into these efforts.
- Development of a regional model for proactive state engagement in each of the EPA planning objectives.

The second goal of the project is to align measurements of environmental and programmatic success used by states and the Region within the NEPPS framework. Products under this goal will include:

- An assessment of how states currently implement and track work committed to in the PPA to support strategic priorities
- An analysis of whether or not the current processes used by states and the region to implement and track joint strategic priorities can be crafted into a regional model or if the individual flexibility in PPA approaches remains the preferred option.
- Development of a tracking system and assessment model to determine if state strategic priorities are reflected in the Regional Plan; the National Program Manager (NPM) Guidance; and the EPA Annual Plan and Budget.

A significant overarching issue for Region 8 state partners concerns resources and infrastructure. The most immediate concerns relate to state budget shortfalls caused by prolonged, difficult economic conditions. Other key concerns relate to information management needs and workforce issues. Region 8 is maintaining close contact with states to monitor the impacts of resource shortfalls on program implementation. The states have requested additional technical support and flexibility from Region 8 to help maximize the effective use of their resources. The workforce issue relates to the immediate and coming retirements of large segments of veteran technical staff and managers in the next few years. Some states have asked EPA to provide additional technical support and training to help bridge this gap. New capabilities in information technology are enabling organizations to become more productive, effective and proactive in service delivery. Taking full advantage of information technology will enable Region 8 and states to accomplish joint environmental missions more quickly and with fewer resources.

Water quality issues related to non-point source pollution represent another concern for Region

8 states. Low flows resulting from drought conditions during the last few years have made these problems more difficult to address. These issues will be a significant impediment to the implementation of TMDLs and attainment of water quality standards over the next several years. Region 8 supports the watershed approach to addressing water quality issues. The Region uses the 319 program and project grants and other available grant funds to help address these issues along with technical assistance.

Region 8 is examining enhanced decision-support tools to provide valuable environmental information in relation to watershed, airshed and ecosystem management (e.g., EMAP/REMAP applications). In addition, at least two states (Colorado and Utah) are working with Region 8 to consider new measures for environmental results in place of traditional activity or output measures. This work is closely associated with the release of the Draft National Report on the Environment.

State Involvement in Development of the Regional Strategic Plan

In spring of 2003, our state partners were briefed on the Regional Plan guidance and the proposed time frame for completion. After receiving the final guidance in October 2003, we completed our first draft of the plan and forwarded a copy to each of our states. States responded with extensive comments, all of which were considered by regional program staff for incorporation in the January 22nd draft of the plan. The State Assistance Program drafted a responsiveness summary and sent it to our six states along with the January 22nd draft of the plan, a deadline for final comments and a description of our next steps to finalize the plan. As part of the ECOS Pilot Project, EPA and states have continued discussions of the Regional Plan, particularly about regional and state priorities and the state role in the planning and budgeting process. Discussions during ECOS Pilot Project meetings have also emphasized early state involvement in the development of EPA's priority strategies.

Tribal Discussion

Region 8 works with 27 tribes located on 26 reservations. The total land area of those reservations is 42,697 square miles, an area exceeding that of the state of Tennessee.

The partnerships between EPA Region 8 and the 27 tribal governments in our geographic area are not as fully developed as those with the states. The establishment of tribal environmental programs began much later than the state programs, and environmental challenges and resources available to address them vary considerably.

Similar partnership values and principles exist for tribal relationships as with states, such as focusing activities at the local level and combining resources. Tribal sovereignty is an overarching factor, and is integral to national and Region 8 policies and guidance on the delivery of environmental programs in Indian Country. That sovereignty is sometimes challenged; EPA supports tribal interests as part of the federal government's trust responsibility.

Region 8 has developed partnerships with the tribes and many other federal agencies to

strengthen our effectiveness in Indian Country. A Memorandum of Understanding (MOU 2000) among 16 federal agencies was signed on January 18, 2000, and is being implemented to bring a combined focus on projects of special priority to tribes. "MOU 2000" is unique nationally, and has been used to address such matters as destroying long-buried dynamite caches, creatively pooling resources to extend water lines to homes with naturally-occurring high arsenic levels in wells, and working cooperatively to increase emergency response capability for a tribal community. Other successful efforts to leverage resources with other agencies are built on the Supplemental Environmental Project (SEP) potential of various enforcement actions. Region 8 actively pursues SEPs in Indian Country.

EPA's involvement with the Council of Energy Resource Tribes is an example of an important partnership effort aimed at achieving environmental results in our priority areas. On May 3 and 4, 2004, the Council of Energy Resource Tribes in conjunction with EPA will sponsor a workshop/training in Denver, Colorado for Tribal Energy issues. The two day learning workshop will partner the Tribes and EPA to develop an understanding of the issues and possibilities involved with energy development in Indian Country. A source book for the partnering and learning will be provided. Both renewable and non-renewable energy sources will be discussed. Topics will include technical assistance capabilities and needs, experiences and perspectives on specific energy projects, involvement of other federal, state and tribal agencies and organizations and continued partnering between the Tribes, EPA and other entities regarding energy development in Indian Country.

EPA's direct implementation of all environmental programs is essential in Indian Country, as few of the tribes in Region 8 have the full capacity to conduct a program. Concurrently, EPA assists tribes as they plan and develop various programs, and provides opportunities for them to conduct portions of programs as they develop capacity.

EPA's General Assistance Program (GAP) supports development of tribal environmental programs, but does not provide a mechanism for long-term implementation. Tribes are often unable to independently financially support their developing environmental programs, and grant funds available through EPA are often restricted by statutory requirements. Given that situation and the resource challenges faced by EPA, Region 8 continues to work with the tribes, other EPA regions and Headquarters to seek stable national funding to support tribal programs, and to increase the resources needed for EPA to conduct effective direct implementation responsibilities.

Region 8 and several tribes work in partnership to maintain a strong presence in the national tribal program, actively participating in the Tribal Operations Committee (TOC), which meets with the EPA Administrator. Region 8's Deputy Regional Administrator has been one of the strongest proponents among EPA senior managers for directing the growth of the tribal program nationally. His presence and strong commitment helps raise awareness of tribal issues, especially among his peers in Headquarters and other regions.

Many programs in Region 8 work actively with tribes. The Regional Operations Committee (ROC) meets quarterly, and holds monthly calls to discuss plans and accomplishments. Direct

communication with Tribal Leaders occurs in a Tribal Leaders Summit and Legal Roundtable, and via an occasional memo from the Regional Administrator. An annual report on the issues faced and successes achieved by the tribes and Region 8 is planned for this year as a way to improve communication about tribal issues.

The Region and various tribes are using the Congressionally authorized Direct Implementation Tribal Cooperative Agreement (DITCA) authority to increase effectiveness in Indian Country. Through these agreements, EPA and tribes can develop work plans to implement portions of EPA direct implementation programs through use of qualified tribal employees. Region 8 is committed to the successful use of DITCAs to develop tribal environmental capacity and improve the Indian Country Environment.

As tribes prepare program plans, they are sometimes incorporated into formal Tribal EPA Agreements (TEAs) or Environmental Management Plans, to aid in their program development.

It is important to note that nearly all measures within the National and Regional Strategic Plans are relevant to Indian Country, particularly where programmatic measures indicate the degree to which public health and environmental protection is achieved.

Tribal Involvement in the Regional Strategic Plan

In the spring of 2003, the Regional Operating Committee, a group that represents each of Region 8's 27 tribes, was briefed on the Regional Plan guidance and the proposed time frame for completion. After we received the final guidance in October, we completed our first draft of the plan and forwarded a copy to each of our tribes the first week in December. Our Tribal Assistance Program held a teleconference with available interested tribes to develop suggested changes to the draft. These suggested changes were considered by regional program staff for incorporation in the January 22nd draft of the Regional Plan. EPA's Tribal Assistance Program sent a comment-response summary to tribal representatives, a link to access to the Region's January 22 draft, a deadline for final comments and an outline of the next steps to finalize the plan. In March, EPA and tribes held a follow-up conference call to discuss EPA's response to comments and to allow an additional opportunity for tribes to offer comments. While developing its National Strategic Plan, EPA consulted with tribes across the country.